(13)

No. 97-174

In The

Supreme Court of the United States

October Term, 1997

CASS COUNTY, MINNESOTA; SHARON K. ANDERSON, in her official capacity as Cass County Auditor; MARGE L. DANIELS, in her official capacity as Cass County Treasurer; STEVE KUHA, in his official capacity as Cass County Assessor; JAMES DEMGEN, in his official capacity as Cass County Commissioner; GLEN WITHAM, in his official capacity as Cass County Commissioner; ERWIN OSTLUND, in his official capacity as Cass County Commissioner; VIRGIL FOSTER, in his official capacity as Cass County Commissioner,

Petitioners,

v.

LEECH LAKE BAND OF CHIPPEWA INDIANS,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF FOR AMICUS CURIAE LUMMI INDIAN TRIBE

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QUESTION PRESENTED

Is freely alienable land owned by a tribal government within its own reservation subject to state taxation merely because the tribe has the ability to sell the land, or is an unmistakably clear congressional grant of taxing jurisdiction also required?

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I. INTEREST OF *AMICUS CURIAE*[1]

The Lummi Indian Tribe holds fee title to lands within the Lummi Reservation which were originally assigned to Tribal members pursuant to the Treaty of Point Elliott.[2] The Tribe has acquired these lands through various means from successors-in-interest of the original assignees, including both Tribal member and non-Indian successors.

Most of the Treaty-based assignments were made in 1884, three years before Congress enacted the General Allotment Act.[3] The purpose of the assignments was to provide permanent homes for the Indians. Article VI of the Treaty. No explicit provision for eventual state taxation of these assignments was included in the Treaty, nor has Congress subsequently clearly expressed an intent that these lands be subject to state taxation.

Nevertheless, the Ninth Circuit Court of Appeals concluded in *Lummi Indian Tribe v. Whatcom County*, 5 F.3d 1355 (9th Cir. 1993), *cert. denied*, 512 U.S. 1228 (1994), that the Tribe's fee lands are subject to county *ad valorem* taxes

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[1] Pursuant to Rule 37.6 of the Rules of this Court, *amicus* states that no counsel for a party authored this brief in whole or in part, and that no person or entity other than *amicus* and its counsel made any monetary contribution to the preparation or submission of this brief. Pursuant to Rule 37.2 of the Rules of this Court, the parties have consented to the filing of this brief. The parties' consents have been filed with the Clerk.

[2] The Treaty was signed on January 22, 1855 and ratified by Congress in 1859. 12 Stat. 927 (1855).

[3] Act of February 8, 1887 codified at 25 U.S.C. §§ 331-334, 339, 341, 348, 349, 354, and 381.

based on its reading of *County of Yakima v. Confederated Tribes and Bands of the Yakima Indian Nation*, 502 U.S. 251 (1992). The majority opinion in *Lummi* acknowledged that its conclusion was "hard to square with the requirement, recently approved by the *Yakima Nation* Court, that Congress' intent to authorize state taxation of Indians must be unmistakably clear", 5 F.3d at 1358, but interpreted *Yakima* as holding Indian "land is taxable if it is alienable," *id.*, largely because of *Yakima's* reliance on *Goudy v. Meath*, 203 U.S. 146 (1906). In dissent, Judge Beezer wrote that the majority "misses the point" and that *Yakima* "did not ignore how the land was allotted; the method of allotment is crucial in federal Indian law." *Lummi*, 5 F.3d at 1360.

The Sixth and Eighth Circuits have interpreted the decision in *Yakima* as confirming the fundamental Indian law principle that Congress must make it unmistakably clear that it intends Indian lands to be taxed by states. In *Yakima*, this Court found that a 1906 amendment to the General Allotment Act expressly permitted state taxation of allotments patented under that Act. In the case now before the Court, the Eighth Circuit could not find an unequivocal congressional intent that lands allotted pursuant to specific sections of the Nelson Act of 1889, ch. 24, 25 Stat. 641, would be subject to state taxation. *Leech Lake Band of Chippewa Indians v. Cass County, Minn.*, 108 F.3d 820 (8th Cir. 1997). In the same year, the Sixth Circuit held that lands allotted under treaty provisions which, like the Treaty of Point Elliott, pre-dated the General Allotment Act are not subject to state taxation. *United States ex rel. Saginaw Chippewa Indian Tribe v. Michigan*, 106 F. 3d 130 (6th Cir. 1997), *petition for cert. filed*, 66 U.S.L.W. 3085,

(U.S. June 30, 1997) (No. 97-14). Both circuits rejected the Ninth Circuit's conclusion that "alienability equals taxability." Indeed, the *Saginaw* court concluded that the Ninth Circuit improperly relied on *Goudy v. Meath*, 203 U.S. 146 (1906), instead of properly relying on the full reasoning of the *Yakima* decision. 106 F.3d at 134.

This conflict between the Circuits is now before the Court for resolution. The Lummi Nation generally endorses the arguments of Respondent and submits this brief to focus particular attention on the *Goudy* decision in both its historical context and in light of the actual record in that case. The Ninth Circuit's and now Cass County's attempts to elevate *Goudy* to controlling status exalt a minor, routine statutory construction case above an unbroken line of principled cases which form the doctrinal heart of federal Indian law.

II. SUMMARY OF ARGUMENT

The law has always recognized two independent barriers to state taxation of Indian land: a federal common law jurisdictional barrier premised on the political status of Indian tribes and location of their land within a reservation, and a property rights barrier based on specific statutory or treaty language which applies regardless of the location of the land. By clear and explicit legislation Congress may remove either or both of these barriers. But removal of one barrier does not affect the other unless Congress specifically so provides.

A patent issued under the General Allotment Act, 25 U.S.C. § 349, removes both barriers. Congress specifically directed that after the issuance of the fee patent "all

restrictions as to sale, incumbrance, or taxation of said land shall be removed." This language simultaneously removes the restraints on alienation and affirmatively authorizes taxation of the particular parcel of land involved without authorizing any other exercise of state jurisdiction over the land or its owner. *Yakima*, 502 U.S. at 264. Merely removing the restraints on alienation of land does not have that effect. In the present case no language comparable to § 349 grants jurisdiction to the state or exposes tribal fee lands to taxation.

Goudy v. Meath does not hold that "alienability equals taxability" except in the very narrow situation where the restraint on alienation is the sole barrier to taxation. That was the case in *Goudy*, which involved an Indian who had severed his tribal relations, become a citizen and conceded that he was subject to state law. It is not generally the case with tribal land located within an established Indian reservation. *Goudy* should not be expanded beyond its unique facts nor considered outside of its historical context and the arguments it involved.

Goudy was not a jurisdictional case; it was a property rights case. In an unbroken string of cases from *The Kansas Indians*, 72 U.S. (5 Wall.) 737 (1867) through *Yakima* and *Oklahoma Tax Comm'n v. Chickasaw Nation*, 515 U.S. 450 (1995), the Court has held that Indian property located on a reservation is not subject to state taxing jurisdiction in the absence of an explicit congressional grant. In *Goudy* the state's taxing jurisdiction was conceded. Consequently, the Court considered only the effect of removing the restrictions on his property. Neither *Goudy* itself nor the Court's treatment of it in *Yakima*

supports the view that alienability equals taxability in the absence of a grant of jurisdiction.

III. ARGUMENT

A. *The Kansas Indians* Established the Basic Principle that a State is Without Jurisdiction to Tax Indian Property Within a Reservation For Two Independent Reasons.

The established law on the taxability of tribal lands at the time of *Goudy v. Meath*, 203 U.S. 146 (1906), was embodied in the landmark cases *The Kansas Indians*, 72 U.S. (5 Wall.) 737 (1867) and *The New York Indians*, 72 U.S. (5 Wall.) 761 (1867). These cases hold that there are two independent sources for the tax exemption, one based on tribal political status and the location of land on a reservation, and one based on property restrictions. While both protections may be present in any given case, either is sufficient to exempt the land from tax. If one protection is removed, the other is unaffected. *Goudy* did not alter those cases; it was premised on them. They remain the law today.

The Kansas Indians actually involved three separate but similar cases. The decisions in these cases established basic principles of law from which the Court has never varied. The central focus of the Court's analysis in the first two of the three cases, *Blue Jacket v. Commissioners of Johnson County*, 72 U.S. (5 Wall.) 737 (1867), and *Yellow Beaver v. Commissioners of Johnson County*, 72 U.S. (5 Wall.) 757 (1867), was on jurisdiction, not on "mere property rights [which] do not affect the civil or political status of the allottees", *In re Heff*, 197 U.S. 488, 509 (1905), but

which might also support a tax exemption. The Court held that a state was without jurisdiction to tax Indian property within a reservation, regardless of the status of the title to the property.

Blue Jacket involved the Shawnee Tribe which, under a series of treaties, had been removed from their aboriginal lands to a reservation in Kansas. The government divided a portion of the reservation lands among the tribal members, and the tribe held title to the remainder. The facts in *Yellow Beaver* were similar. In neither case was there an express exemption from state taxation in any of the treaty language.

Kansas conceded that it could not tax the tribal lands, but contended that individual lands could be taxed. 72 U.S. (5 Wall.) at 755. The Court mentioned the fact that the individuals held fee title subject to a restriction on alienation, but this fact played no part in the analysis of the case. 72 U.S. (5 Wall.) at 753. The holding was based purely on the location of the land on the reservation, the continuing political existence of the tribe, and the continued political relationship between the tribe and its members. In a fundamental and oft-cited explication of federal Indian law the Court held:

> If the tribal organization of the Shawnees is preserved intact, and recognized by the political department of the government as existing, then they are a "people distinct from others," capable of making treaties, separated from the jurisdiction of Kansas, and to be governed exclusively by the government of the Union. If under the control of Congress, from necessity there can be no divided authority. If they have outlived

> many things, they have not outlived the protection afforded by the Constitution, treaties, and laws of Congress. It may be, that they cannot exist much longer as a distinct people in the presence of the civilization of Kansas, "but *until they are clothed with the rights and bound to all the duties of citizens," they enjoy the privilege of total immunity from State taxation.* . . . There is no evidence in the record to show that the Indians with separate estates have not the same rights in the tribe as those whose estates are held in common. . . . Conferring rights and privileges on these Indians cannot affect their situation, which can only be changed by treaty stipulation, or a voluntary abandonment of their tribal organization. As long as the United States recognizes their national character they are under the protection of treaties and the laws of Congress, and their property is withdrawn from the operation of State laws.

Blue Jacket, 72 U.S. (5 Wall.) 737, 755-57 (emphasis added). This is one of the earliest statements of the rule requiring congressional grants of taxing jurisdiction in Indian country to be clear and explicit. This Court has repeated and applied this fundamental principle in numerous cases. See, e.g., *McClanahan v. State Tax Commission of Arizona*, 411 U.S. 164 (1972), *Moe v. Confederated Salish and Kootenai Tribes*, 426 U.S. 463 (1976), *Bryan v. Itasca County*, 426 U.S. 373 (1976), *Montana v. Blackfeet Tribe*, 471 U.S. 759 (1985), *Oklahoma Tax Comm'n v. Sac and Fox Nation*, 508 U.S. 114 (1993), *Oklahoma Tax Comm'n v. Chickasaw Nation*, 515 U.S. 450 (1995).

The Court applied the same reasoning to the second and third *Kansas Indians* cases, *Yellow Beaver, supra,* (involving the Wea Tribe) and *Wan-zop-e-ah v. Commissioners of Miami County,* 72 U.S. (5 Wall.) 759 (1867), (involving the Miami Tribe). But, in the Miami case, an additional basis for exemption was found:

> There is, however, one provision in the Miami treaty – being in addition to the securities furnished the Shawnees and Weas – which, of itself, preserves the Miami lands from taxation. This particular provision exempts the lands from "levy, sale, execution, and forfeiture."

72 U.S. (5 Wall.) at 760. The Court held that the exemption from levy, sale and forfeiture was inherently an exemption from taxation as well, because taxes are levied and then collected though forfeiture and sale proceedings. 72 U.S. (5 Wall.) at 761.

That these are two independently sufficient grounds for tax exemption could not be made more clear. One is based on political status; one on a property restriction. In *Blue Jacket* and *Yellow Beaver* there was no exemption language, yet the Court found that state taxation was incompatible with tribal status. The laws of Kansas could not be applied to tribal Indians whose property was located within their reservation.

In *Wan-zop-e-ah,* the Court relied on the treaty exemption language as an additional ground for its decision, which "in itself" preserved the lands from taxation. This exemption would apply regardless of the location of the

land or the status of the owner as long as the terms of the exemption remained in effect.[4]

Because there are two independent grounds for exemption, not every Indian tax case discusses them both. Indeed, most cases have been decided on the tribal status ground alone, and the Court has formulated their holdings into a *per se* rule which presumes against the existence of state taxing power where the property is located on a reservation and tribal status exists. *Oklahoma Tax Comm'n v. Sac and Fox Nation,* 508 U.S. 114, 128 (1993).

Explicit restrictions against taxation provide a second line of defense. In a small number of cases they are the only defense, typically because the property is located outside a reservation or because the owner can no longer claim Indian status. As is explained more fully below, *Goudy v. Meath* falls into this latter category. In those cases, the litigation focuses on the effect of the restrictions or the consequences of their removal in the context of acknowledged state jurisdiction.

For example, in *Pennock v. Commissioners,* 103 U.S. 44 (1880), the Court addressed the situation of an Indian woman who remained behind when her tribe was removed to a reservation in a different state. The old reservation was abolished and the restrictions on her land had expired. Because she still maintained a relationship with her tribe, she argued that her land could not be

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[4] The Court did not focus on the restraints on alienation, although those restraints would logically provide a third basis for prohibiting taxation, since the result of non-payment of real estate taxes is an involuntary sale of the land.

taxed. In concluding that she was not entitled to a tax exemption, the Court undertook a two-step analysis. First, it noted that she held unrestricted fee title to her land and could not claim an exemption on that ground. Then it distinguished *The Kansas Indians* on the basis of political status. Her land was not located on a reservation. In the absence of a restriction on her title, her decision to separate herself from her tribe was fatal to her claim of Indian status:

> She might have followed her tribe – she can now do it; but as that tribe, under a treaty with the United States, has left the State, while she remains, and has taken, not an imperfect title, to be held under the guardianship of the Secretary of the Interior, to be disposed of only to the United States, under regulations to be prescribed by him, but a title carrying with it absolute ownership, with a right of free disposition at her will, she and her property have come under the control of the State, and are subject to its laws, entitled to its protection, and bound to bear a portion of its burdens.

103 U.S. at 48.

Distinguishing the situation of the Shawnee patent holders in *Blue Jacket* from that of Mrs. Pennock, the Court held:

> Their tribal organizations continuing in the State, and the United States treating with them as distinct political communities, the legislature of Kansas could not interfere with their lands or the lands of individual members of the tribes, and subject them to taxation.

103 U.S. at 49.

The Shawnees, regardless of the state of their title, could not be taxed by the state because of their political status and the location of their land on a reservation. Mrs. Pennock, on the other hand, could not claim that her tribal organization continued within the state. Her tribe had been removed to Oklahoma. Their reservation no longer existed in Kansas. Although still a member of her tribe, she was outside their reservation with no federal restrictions or exemptions applicable to her land. Her land was taxable. This was the law at the time *Goudy* was decided and it remains the law today.

Nearly a century later the Court would summarize an unbroken string of similar cases and analysis in the context of a tribal claim for an off-reservation tax immunity:

> [I]n the special area of state taxation, absent cession of jurisdiction or other federal statutes permitting it, there has been no satisfactory authority for taxing Indian reservation lands or Indian income from activities carried on within the boundaries of the reservation, and *McClanahan v. State Tax Commission of Arizona, supra*, [411 U.S. 164 (1972)] lays to rest any doubt in this respect by holding that such taxation is not permissible absent congressional consent.
>
> But tribal activities conducted outside the reservation present different considerations. . . . Absent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to non-discriminatory state law otherwise applicable to all citizens of the State.

Mesaclero Apache Tribe v. Jones, 411 U.S. 145, 148-49 (1972) (citations omitted)

This is precisely the holding in *Pennock* and in *The Kansas Indians*. It is also the analysis the Court used in *Goudy v. Meath* to conclude that unrestricted land belonging to an Indian who had severed his tribal relations and become a citizen was subject to taxation. *Goudy* and *Pennock* are similar cases, but neither is authority for taxing tribally owned fee land located within a recognized Indian reservation in the absence of unmistakably clear congressional consent.

B. The Decision in *Goudy* Dealt Only With the Removal of Statutory Restrictions; Jurisdiction to Tax was Conceded.

Goudy involved only property restrictions. The landowner in *Goudy* was an Indian who was "formerly a member of the Puyallup tribe" who had "entirely severed his tribal relations" and become an American citizen. See, *Goudy v. Meath*, 38 Wash. 126, 127, 80 P. 295, 296 (1905). His sole claim to a tax exemption was founded on a restraint on his property rights which the government had recently removed. Although ethnically an Indian, under the short-lived law of the day he no longer had the legal status of an Indian and was fully subject to state law, including the tax laws. *In re Heff*, 197 U.S. 488 (1905); *overruled, United States v. Nice*, 241 U.S. 591 (1916).[5]

[5] *Heff* is the only case cited in *Goudy*. It held that citizenship was incompatible with Indian status, but the holding lasted only eleven years. In 1916 the Court explicitly overruled *Heff*, concluding that it had misinterpreted congressional intent in granting citizenship to allottees, 241 U.S. at 601, and that Congress did not intend to subject allottees to state law until the reservations were finally abolished. This, of course, has never occurred. See discussion at pages 17-19, *infra*.

Goudy conceded he was subject to state law and that his land was taxable if the exemption from levy, sale and forfeiture had been removed.[6] Brief of Plaintiff in Error, James Goudy, p. 8, reproduced at App. 42 (Hereafter "Goudy Brief").

The Court was not called upon to rule on any other issue and it made no other ruling. It certainly did not reverse *The Kansas Indians* trilogy or call into question any of their doctrinal underpinnings. Goudy himself argued that *Blue Jacket* was inapplicable to his situation because, unlike the Shawnees, he was subject to state law. Goudy Brief at p. 14, App. 48. He relied only on *Wan-zop-e-ah*, the Miami case which held that an exemption from levy, sale and forfeiture provided a basis for tax exemption *independent* from the tribal political status he no longer held. Goudy Brief, at p. 8, App. 42.

As revealed by the record in *Goudy*, the facts of the case were these: James Goudy was made a citizen by Section 6 of the Act of February 8, 1887, because he had received a patent under a prior treaty.[7] Under the ruling

[6] The relevant portions of the record on appeal and the parties' briefs in *Goudy* are reproduced in the Appendix to this brief.

[7] In *Elk v. Wilkins*, 112 U.S. 94 (1884), the Court ruled that an Indian who had voluntarily severed his tribal relations and "taken up the habits of civilized life" was still not entitled to United States citizenship, notwithstanding the Fourteenth

in *Heff*, he was then "clothed with the rights and bound to all the duties of citizens," *Blue Jacket*, 72 U.S. (5 Wall.) at 756, and he no longer enjoyed "the privilege of total immunity from State taxation." *Id.* His sole defense was the exemption from levy, sale or forfeiture found in his restricted fee patent. The Court held that when the restrictions on his patent expired, the immunity from taxation also expired, and, since he was a full citizen with no other claim to a tax exemption, his land became taxable.

Significantly, the Court analyzed the tax exemption claim entirely in terms of ordinary tax legislation construction: Tax exemptions will not be implied and the burden is on the taxpayer to demonstrate their existence.[8] The canons of construction in Indian cases, so eloquently

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Amendment's grant of citizenship to "all persons born or naturalized in the United States, and subject to the jurisdiction thereof." The Court ruled that Congress must affirmatively grant citizenship to Indians who had renounced their tribal membership. In 1887 Congress passed Section 6 of the General Allotment Act which unilaterally granted citizenship to all Indians to whom land had been patented in severalty, under either that statute or "any prior statute or treaty". James Goudy had received a restricted fee patent in 1884 pursuant to the provisions of the Treaty of Medicine Creek, 10 Stat. 1132, and he automatically became a citizen in 1887.

[8] "[T]he tradition of Indian sovereignty requires that the rule be reversed when a State attempts to assert tax jurisdiction over an Indian tribe or tribal members living and working on land set aside for those members." *Oklahoma Tax Comm'n v. Sac and Fox Nation*, 508 U.S. 114, 124 (1993); see also, *Choate v. Trapp*, 224 U.S. 665, 674-75 (1912).

restated by the Court only seven years earlier in *Jones v. Meehan*, 175 U.S. 1 (1899),[9] are nowhere mentioned in *Goudy*. Why? Because at the time an Indian who had become a citizen could not claim "Indian" rights. *Heff, supra.*

Goudy himself conceded this point from the beginning of the case through his arguments to this Court. In his complaint he alleged that he was "a citizen of the United States, and entitled to all of the rights, privileges, and immunities of such citizens." Transcript of Record, *Goudy v. Meath*, p. 4, App. 9 (Hereafter "Goudy Record"); see also Agreed Statement of Facts at Goudy Record, pp. 10-18, App. 20-34 especially p. 14, section 7, App. 26. Mr.

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[9] In *Meehan*, 175 U.S. at 10-11, the Court held:

> In construing any treaty between the United States and an Indian tribe, it must always . . . be borne in mind that the negotiations for the treaty are conducted, on the part of the United States, an enlightened and powerful nation, by representatives skilled in diplomacy, masters of a written language, understanding the modes and forms of creating the various technical estates known to their law, and assisted by an interpreter employed by themselves; that the treaty is drawn up by them and in their own language; that the Indians, on the other hand, are a weak and dependent people, who have no written language and are wholly unfamiliar with all the forms of legal expression, and whose only knowledge of the terms in which the treaty is framed is that imparted to them by the interpreter employed by the United States; and that the treaty must therefore be construed, not according to the technical meaning of its words to learned lawyers, but in the sense in which they would naturally be understood by the Indians. (citations omitted)

Goudy further stipulated "[t]hat the Indians residing upon said reservation have entirely abandoned all their tribal customs and manners; they have and recognize no chiefs, headmen or other tribal authority. . . . " Goudy Record at p. 18, App. 34.

Because of his citizenship Mr. Goudy specifically disclaimed reliance on *Blue Jacket* in his brief to this Court:

> No great light is thrown upon the case at bar by the consideration of the adjudged cases. The circumstances surrounding each case which counsel for plaintiff in error has been able to find, are in at least some particulars so different from the facts in this case, as to render the case of but little value as authority. The case of Blue Jacket vs. Commissioners, 5 Wallace, Law. Ed., Book 18, page 667, is perhaps the leading case on the subject. In that case the facts were quite similar in some respects, viz, the land had been allotted in severalty; the Indians lived among the whites; and their tribal customs (as actually observed) had been much broken into. ***But the decision was placed upon the ground that the tribal relation actually existed, which renders it of no value as an authority in this case.***

Goudy Brief, p. 14, App. 48 (emphasis added). See also Brief of Defendant in Error, p. 13, App. 63. ("Neither is the case of the Kansas Indians in point because those lands belonged to tribal Indians; Indians who have never severed their tribal relations. . . . ")

Mr. Goudy's concession on the effects of citizenship on Indian rights was at least superficially consistent with the law of the day, *see Heff*, but that law changed rapidly after *Goudy* was decided, and it was explicitly overruled

only ten years later. In *Heff*, the only case cited by the Court in *Goudy*, the Court ruled that the unique federal jurisdiction over Indian affairs could not be applied to an Indian who had severed his tribal relations and become a citizen. *Heff* involved the prosecution of a white man for selling liquor to an Indian in violation of the Indian liquor laws. The Indian, one John Butler, had renounced tribal membership and become a citizen. The Court held that since he was a citizen and not a "tribal Indian", Congress could not make it a crime to sell liquor to him. 197 U.S. at 509.

The Court soon re-examined this premise, however. In 1909 the Court held that a Tulalip Indian who had received a patent under a treaty provision identical to the one in *Goudy* could be prosecuted in federal court for murder occurring on a reservation notwithstanding the fact that he was a citizen. *United States v. Celestine*, 215 U.S. 278 (1909). In 1912 the Court held that a statutory restraint on alienation was legally separable from a statutory tax exemption, the former being a burden and the latter a benefit. *Choate v. Trapp*, 224 U.S. 665, 673 (1912). The benefit was a property right which could not be taken away without compensation under the due process clause. 224 U.S. at 678. This conclusion called into question even the statutory construction holding in *Goudy* that removal of the alienation restraint also removed the exemption from levy, sale and forfeiture on which the tax exemption was based.

Finally, in 1916, on facts virtually identical to those in *Heff*, the Court explicitly overruled that case. "[A]fter re-examining the question in the light of other provisions in

the [General Allotment] act, and of many later enactments, clearly reflecting what was intended by Congress, we are constrained to hold that the decision in that case is not well grounded, and it is accordingly overruled." *Nice*, 241 U.S. at 601.

Since the decision in *Nice* it has been clear that Indian legal status and citizenship are not mutually exclusive, and that state jurisdiction is not extended over reservation Indians by virtue of their citizenship. See, e.g., *Moe v. Confederated Salish and Kootenai Tribes*, 426 U.S. 463 (1976); *Bryan v. Itasca County*, 426 U.S. 373 (1976).

Not only did the Court itself repudiate its holding on the effects of citizenship, in 1934 Congress explicitly repudiated the allotment policy which had formed the underpinnings of the *Heff* decision. Indian Reorganization Act, 48 Stat. 984, now amended and codified as 25 U.S.C. § 461 et seq. See also, *Bryan*, 426 U.S. 373, 388 n. 14 ("[C]ourts 'are not obliged in ambiguous instances to strain to implement (an assimilationist) policy Congress has now rejected, particularly where to do so will interfere with the present congressional approach to what is, after all, an ongoing relationship.' ") (citation omitted). As a consequence, any Indian case decided in the decade between *Heff* and *Nice* must be carefully examined for its jurisdictional assumptions.

It may be true that Congress envisioned the *eventual* elimination of Indian Reservations and the application of state law to Indian people when it passed the General Allotment Act in 1887. But that vision, if it existed, was not self-executing. It depended on additional, future legislation that was never passed. As the Court definitively

held in *Mattz v. Arnett*, 412 U.S. 481 (1973), the policy of the General Allotment Act "was to continue the reservation system and the trust status of Indian lands, but to allot tracts to individual Indians for agriculture and grazing. When *all* the lands had been allotted *and* the trust expired, the reservation *could* be abolished." 412 U.S. at 496 (emphasis added)

In rejecting a claim that *Goudy* represented a major jurisdictional shift giving states jurisdiction over Indian owned fee lands, the Court later held: "If the General Allotment Act itself establishes Montana's jurisdiction as to those Indians living on 'fee patented' lands, then for all jurisdictional purposes, civil and criminal, the Flathead Reservation has been substantially diminished in size." *Moe v. Confederated Salish and Kootenai Tribes*, 426 U.S. 463, 478 (1976). Clearly, *Goudy* fails as authority for such a sweeping change in federal Indian law jurisprudence.

C. This Court's Decision in *Yakima* Reaffirmed Basic Jurisdictional Principles Which Bar State Taxation of Tribal Lands in the Absence of Unmistakably Clear Congressional Intent and Did Not Equate Alienability With Taxability

In *Moe* the issue was whether the state could tax freely alienable personal property owned by Indians residing on fee land within the reservation. The Court held it could not because there had been no unmistakably clear grant of taxing authority over personal property, and the General Allotment Act itself did not provide that authority.

Building on that ruling the Yakima Tribe argued that reservation fee lands were likewise exempt. However, in *Yakima* this Court found an explicit congressional reference to taxation of lands patented under the General Allotment Act. 502 U.S. at 264. This satisfied the "unmistakably clear intent" test which the Court affirmatively restated and applied as the rule of decision in the case. 502 U.S. at 258.

The *Yakima* Court also discussed *Goudy* and noted that when Mr. Goudy's land became alienable it also became taxable. 502 U.S. at 263. As demonstrated above, that statement was correct in *Goudy* because he was already fully subject to state law, and only the restraint on alienation stood between him and taxation of his land. Mere removal of the restraint on alienation does not eliminate the otherwise applicable jurisdictional barrier to state taxation of Indian property unless the language of the removal also includes a grant of jurisdiction. The Court found such language in the Burke Act in *Yakima*.

What sets *Yakima* apart from other Indian tax cases is the limited dual purposes served by the statutory language involved. In most cases there is either a direct grant of jurisdiction, *e.g.*, *Bryan*, 426 U.S. 373 (broad criminal and limited civil adjudicatory jurisdiction under P.L. 83-280) or a specific alteration of property rights and restrictions, *e.g.*, *Choate*, 224 U.S. 665. The Burke Act, as construed by the Court in *Yakima*, in one brief phrase authorized both the removal of property restrictions and the extremely limited grant of jurisdiction to tax the particular parcel involved: "[T]hereafter all restrictions as to sale, incumbrance, or taxation of said land shall be removed." 25 U.S.C. § 349. As the Court noted, this was

not a grant of full plenary jurisdiction to the state or even full taxing jurisdiction. "The short of the matter is that the General Allotment Act explicitly authorizes only 'taxation of . . . land,' not 'taxation with respect to land,' 'taxation of transactions involving land,' or 'taxation based on the value of land.' " 502 U.S. at 269. The *Yakima* Court reaffirmed that explicit authorization is required. 502 U.S. at 258 (citing numerous cases).

Cass County argues that because the Court in *Yakima* observed that the *Goudy* Court found the alienability of the lands to be of "central importance", alienability automatically equates to taxability in all cases. This is incorrect. As demonstrated above, the reason alienability was central to *Goudy* is that the landowner conceded he was already subject to all state laws, including the tax laws. Indeed, the *Yakima* analysis begins its discussion of *Goudy* noting that, under the law of the day, Mr. Goudy's property was subject to all state laws, including the tax laws. 502 U.S. at 259-260. It was against that background that the Court discussed the effects of removal of the restraints on alienation.

While it was possible for Congress to exempt Indian property from taxation, even if it was otherwise subject to state law, *see Wan-zop-e-ah*, the *Goudy* Court required *that* exemption to be clearly stated because it would override normally applicable state law. The *Yakima* Court agreed. In other words, once general state jurisdiction is established, the burden is on the taxpayer to demonstrate the exemption. A restraint on alienation is sufficient to provide the exemption, but if state jurisdiction exists, removal of that restraint removes the tax exemption because the tax laws already apply to the property. If

state jurisdiction is lacking, however, removing a restraint on alienation will not confer jurisdiction. There must be an explicit grant of jurisdiction, such as the Burke Act, either contemporaneously with the removal or at some other time. 502 U.S. at 264. No such grant exists here.

IV. CONCLUSION

The *Yakima* ruling was accurately interpreted and applied by the Eighth Circuit Court of Appeals in this case, and by the Sixth Circuit Court of Appeals in *Saginaw*. Only the Ninth Circuit Court of Appeals in *Lummi* has failed to correctly apply *Yakima*, and even there the majority found its decision "hard to square" with the requirement that congressional intent be made unmistakably clear.

The requirement of unmistakable clarity in congressional intent to grant taxing jurisdiction over Indian land has been consistently and uniformly applied from *The Kansas Indians* through *Yakima* and including the Court's most recent Indian tax decision in *Oklahoma Tax Comm'n v. Chickasaw Nation*, 515 U.S. 450. That clear intent was conceded in *Goudy* where the plaintiff stipulated that he and his land were subject to state jurisdiction, relying only on a claimed incomplete removal of restrictions to exempt his land from tax. The Court has never held that alienability equals taxability unless state jurisdiction was also present. It should not overrule one hundred and

thirty years of consistent precedent to reach that result now. The Eighth Circuit should be affirmed.

Respectfully submitted,

Office of the
Reservation Attorney
JUDITH K. BUSH
2616 Kwina Road
Bellingham, WA 98226
(360) 384-2258

RAAS, JOHNSEN & STUEN, P.S.
HARRY L. JOHNSEN, III
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Bellingham, WA 98227
(360) 647-0234
Counsel of Record
for Lummi Indian Tribe

January 13, 1998

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 53.

JAMES GOUDY, PLAINTIFF IN ERROR,

vs.

EDWARD MEATH, ASSESSOR OF PIERCE COUNTY, WASHINGTON.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

FILED JUNE 20, 1905.

(19,808.)

[p. 1] **(19,808.)**

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 306.

JAMES GOUDY, PLAINTIFF IN ERROR,

vs.

EDWARD MEATH, ASSESSOR OF PIERCE COUNTY, WASHINGTON.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

INDEX.

512-8.

Filed Apr. 19, 1904. C. S. Reinhart, Clerk.
F. S. Guyot, Dep.

JAMES GOUDY, Plaintiff,

v.

EDWARD MEATH, Assessor of Pierce County, Washington, Defendant.) # 22774.

Transcript on Appeal.

In the Superior Court of the State of Washington for the County of Pierce.

JAMES GOUDY, Plaintiff,)
) 22774.
vs.) Complaint.
EDWARD MEATH, Assessor of Pierce County, Washington, Defendant.)

To the honorable judges of the above named court:

The plaintiff named in the above entitled cause complains of the defendant therein named, and for cause of action alleges and respectfully shows to the court as follows.

1.

That on the 26th day of December, 1854, a treaty was concluded and signed between the United States, and the Puyallup and other tribes of Indians, and was thereafter duly ratified and confirmed by the President and Senate of the United States.

2.

That by the terms of said treaty, lands were reserved for the members of said bands of Indians, and it was therein agreed that the same were to be assigned and patented to said members in severalty, on the same terms and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, as far as the same may be applicable. That the lands hereinafter described were a portion of the lands so reserved by said treaty.

3.

That the sixth article of said treaty with the Omahas, is in the words following, towit:

"The President may from time to time, at his discretion, cause the whole or such portion of the land hereby reserved, as he may think proper, or of such other land as may be selected in lieu thereof, as provided for in article first, to be surveyed into lots, and to as- [p. 2] sign to such Indian or Indians, of said tribe as are willing to avail of the privilege, and who will locate on the same as a permanent home, if a single person over twenty-one years of age, one-eighth of a section; to each family of two, one quarter section; to each family of three and not exceeding five, one half section; to each family of six and not exceeding ten, one section; and to each family over ten in number one quarter section for every additional five members. And he may prescribe such rules and regulations as will insure to the family, in case of the death of the head thereof, the possession and enjoyment of such permanent home, and the improvements thereon.

And the president may, at any time, in his discretion, and after such person or family has made a location on the land assigned for a permanent home, issue a patent to such person or family for such assigned land, conditioned that the tract shall not be aliened or leased for a longer term than two years; and shall be exempt from levy, sale or forfeiture, which conditions shall continue in force until a State constitution, embracing such lands within its boundaries shall have been formed, and the legislature of the State shall remove the restrictions. And if any such person or family shall at any time neglect or refuse to occupy and till a portion of the lands assigned, and on which they have located, or shall rove from place to place, the president may, if the patent shall have been issued, cancel the assignment, and may also withhold from such person or family, their proportion of the annuities or other moneys due them, until they shall have returned to such permanent home, and resumed the pursuits of industry; and in default of their return, the tract may be declared abandoned, and thereafter assigned to some other person or family of such tribe, or disposed of as provided for the disposition of the excess of said land.

And the residue of the land hereby reserved, or of that which may be, selected in lieu thereof, after all of the Indian persons or families shall have and assigned to them permanent homes, may be sold for their benefit, under such laws, rules or regulations as may hereafter be prescribed by the Congress or President of the United States, No State legislature shall remove the restrictions herein provided for, without the consent of Congress."

4.

That plaintiff was born within the territorial limits of the United States; and on and prior to the 17th day of January, 1881, was a member of the Puyallup tribe of Indians, and was one of the members of said tribe entitled to an assignment of land under the provisions of said treaty, and that on said day the land hereinafter described was duly assigned to plaintiff.

5.

That plaintiff availed himself of the privilege thus offered, and accepted said assignment, and located upon said land as a per- [p. 3] manent home, and cleared and cultivated said land, and built a dwelling house and other permanent improvements thereon.

6.

That on the 30th day of January, 1886, under the provisions of said treaty, the United States executed and delivered to plaintiff a patent for said land, which said patent is in the words and figures following, to wit:

"The United States of America to all to whom these presents shall come, Greeting:

Whereas, by the sixth article of the treaty concluded on the twenty sixth day of December, anno Domini one thousand eight hundred and fifty four, between Isaac I. Stevens, governor and superintendent of Indian affairs of Washington Territory, on the part of the United States, and the chiefs, headmen, and delegates of the Nisqually,

Puyallup, Steilacoom, Squawskin, S'Homamish, Stehchass, T'Pee-skin, Squiaitl, and Sa-heh-wanh tribe and bands of Indians, it is provided that the president, at his discretion, cause the whole or any portion of the lands hereby reserved, or of such other land as may be selected in lieu thereof, to be surveyed into lots, and assign the same to such individuals or families as are willing to avail themselves of the privilege, and will locate on the same as a permanent home, on the same terms and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable;

And whereas, there has been deposited in the General Land Office of the United States, an order bearing date January 20th, 1886, from the Secretary of the Interior, accompanied by a return dated October 30th, 1884, from the Office of Indian Affairs, with a list approved October 23rd, 1884, by the president of the United States showing the name of members of the Puyallup band of Indians who have made selections of land in accordance with the provisions of the said treaties, in which lists the following tracts of land have been designated as the selection of James Goudy, the head of a family consisting of himself and Mary, viz: The northwest quarter of the northwest quarter and lots number three, four, seven, and eight, of the section twenty one, in township twenty north of range four east of the Williamette meridian, Washington Territory, containing in the aggregate one hundred nine and 50-100 acres;

Now know ye, that the United States of America, in consideration of the premises and in accordance with the directions of the President of the United States under the

aforesaid sixth article of the treaty of the sixteenth day of March anno Domini one thousand eight hundred and fifty four, with the Omaha Indians, has given and granted and by these presents does give and grant, unto the said James Goudy, as the head of the family as aforesaid, and to his heirs, the tracts of land above described, but with the stipulation contained [p. 4] in the said sixth article of the treaty with the Omaha Indians, that the said tracts shall not be alienated or leased for a longer term than two years, and shall be except from levy, sale or forfeiture, which condition shall continue in force until a State constitution embracing such lands within its boundaries shall have been formed and the legislature of the State shall remove the restrictions, and no State legislature shall remove the restrictions without the consent of Congress.

To have and to hold the said tracts of land, with the appurtenances, unto the said James Goudy, as the head of the family as aforesaid and to his heirs forever, with the stipulation aforesaid.

In testimony whereof, I, Grover Cleveland, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington this thirtieth day of January in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the one hundred and tenth.

By the President: GROVER CLEVELAND.
By M. McKEAN, Secretary.

S. W. CLARK, R."

7.

That since the issuance of said patent, and by an act of Congress passed and approved on the 8th day of February, 1887, plaintiff became and now is a citizen of the United States, and entitled to all the rights, privileges and immunities of such citizens.

8.

That the United States continues to maintain an agent in charge of said reservation, and conducts thereon a school, at which Indian children whose parents reside on such reservation, are maintained free of costs to their parent, are instructed in the elementary branches of learning, and are given practical instruction in farming and other useful pursuits.

9.

That on the 11th day of November 1889, a State constitution embracing said lands within its boundaries was formed.

10.

That the defendant Edward Meath is the duly elected, qualified and acting assessor of Pierce county, Washington, in which said county said lands are situated, and said defendant claims that said lands are subject to taxation for State, county and other municipal purposes, and threatens to, and will, unless restrained by this honorable court, assess said land, and all other land in said reservation, owned and held by Indians, members of said

Puyallup tribe, under [p. 5] patents of the United States similar to plaintiff's for taxes for State, county, and other municipal purposes, and will enter said land upon the tax rolls of said county, and enter and extend taxes against said land for said purpose, and will thereby cast a cloud upon the title to said land, and deprive plaintiff of the quiet enjoyment thereof, and cause him great and irreparable injury.

11.

That plaintiff has no other plain, speedy or adequate remedy at law.

12.

Plaintiff specially sets up and claims immunity from taxation for said land, under and by virtue of said treaty of December 26th 1854, and under and by virtue of the restrictions contained in the sixth article of the treaty with the Omahas.

13.

That at all times since the issuance of said patent, plaintiff has continued to occupy said land as a permanent home, and has cleared said land and cultivated the same and now resides thereon.

Wherefore, plaintiff prays that after due notice to the defendant, and a hearing by this honorable court the defendant be enjoined from placing said land upon the tax rolls of Pierce county, Washington or assessing or attempting to assess said land for State, county, or other

municipal purposes, so long as the same is held and owned by *or other municipal purposes, so long as said land is owned by* plaintiff or his heirs, or until the legislature of the State of Washington shall remove the restrictions against the taxation of said land, and the Congress of the United States shall consent that such restrictions be removed.

That plaintiff may have such other and further relief as he may be entitled to receive, and that plaintiff recover of and from the defendant his costs and disbursements herein.

GEO. T. REID,
Attorney for Plaintiff.

Office room 405, Chamber of Commerce building, Tacoma, Pierce county, Wash.

STATE OF WASHINGTON,)
) *ss:*
County of Pierce,)

James Goudy, being first duly sworn on oath says: That he is the plaintiff named in the above entitled cause that he has read the foregoing complaint; knows the contents thereof, and believes the same to be true.

JAMES GOUDY.

[p. 6] Subscribed and sworn to before me this 14th day of March, 1904.

GEO. T. REID,

Notary Public in and for the State of Washington;

Residing at Tacoma, Pierce County, Washington.

[NOTARIAL SEAL.]

Filed in superior court, March 14, 1904.

A. M. BANKS, Clerk.

In the Superior Court of the State of Washington
in and for Pierce County.

JAMES GOUDY, Plaintiff,	)	
	)	
vs.	)	No. ___.
EDWARD MEATH, Assessor of Pierce County, Washington, Defendant.	)	Answer.

Comes now the defendant Edward Meath, as assessor of Pierce county, Washington, and for answer to plaintiff's complaint herein alleges and shows to the court.

First.

Defendant admits the allegations contained in paragraphs one, two, three, four, five, six, seven, nine, ten and thirteen of said complaint.

Second.

Defendant denies each and every allegation contained in paragraph-eight, eleven, and twelve of said complaint.

And for a further and affirmative answer and defense to plaintiff's complaint, defendant alleges:

First.

That all restrictions contained in the treaty and patents aforesaid became extinguished, relinquished and released on the 3rd day of March, 1903, by the act of the legislature of the State of Washington approved March 22nd, 1890, entitled "An act enabling the Indians to sell and alien the lands of the Puyallup Indian reservation in the State of Washington" and an act of Congress approved March 3rd, 1893, known and entitled the Indian approbation [sic] act, and the Government of the United States and the officers thereof ever since the said 3rd day of March, 1903, have abandoned all supervision, and control over the patented lands witin [sic] the boundaries of the Puyallup Indian reservation aforesaid, and are not now exercising any authority or control over the same, and have ever since said 3rd day of March, 1903, construed said act of the legislature of the State of Washington of March 22nd, 1890, and of Congress of March 3rd, 1893, as having had the legal effect of removing all restrictions contained in said treaty, stipulation and patents from the said patented lands aforesaid.

[p. 7] Second.

That this defendant, acting under the advice of the prosecuting attorney of Pierce county, Washington, and under and by virtue of the construction placed upon the said acts aforesaid of the legislature of the State of Washington, and of the Congress of the United States, did on the 1st day of March, 1904, assess the said patented lands upon said Puyallup Indian reservation, upon the rolls of Pierce County, Washington, for taxation for the year 1904,

the same as all other lands in the county of Pierce, and intends to and will return the said lands, together with the other property so assessed upon said rolls to the board of equalization of Pierce county, Washington, as by law required.

Wherefore, defendant prays that this action be dismissed, and that he have judgment for his costs and disbursements herein against the plaintiff.

F. CAMPBELL,
Attorney for Defendant.

STATE OF WASHINGTON,)
) *ss:*
County of Pierce,)

Edward Meath, being first duly sworn, on his oath deposes and says: That he is the duly elected, qualified and acting assessor of Pierce county, Washington, and the defendant in the above entitled action; that he has read the foregoing answer knows the contents thereof, and that the same is true as he verily believes.

EDWARD MEATH.

Subscribed and sworn to before me this 29th day of March, A. D. 1904.

RICHARD W. JAMIESON,
Notary Public in and for the State of Washington,
Residing at Tacoma, Pierce County, Washington.

Filed in open court dept. No. 1, 29 day of March, 1904.

A. M. BANKS, Clerk.
WALKER, Deputy.

In the Superior Court of the State of Washington
for the County of Pierce.

JAMES GOUDY,, Plaintiff,	)	
	)	
vs.	)	No. 22774.
EDWARD MEATH, Assessor of Pierce County, Washington, Defendant.	)	Judgment.

This cause coming on to be heard before the court on the 29th day of March, 1904, upon the agreed statement of facts signed by counsel, and filed in this court on the 25th day of March, 1904, no [p. 8] other or different facts than those shown by said agreed statement being offered or considered by the court. Upon said agreed statement counsel for plaintiff and defendant argued the questions of law arising thereon, and the court thereupon reserved said case for consideration.

And now, on this 2nd day of April, 1904, the court being fully advised and being of the opinion that plaintiff's land, and the permanent improvements thereon are subject to taxation, it is,

Ordered, that plaintiff's claim of immunity from taxation for said land and permanent improvements, under and by virtue of the treaty of December 26th, 1854, with the Puyallups, and under and by virtue of the restrictions contained in the sixth article of the treaty with the Omahas is denied.

It is further ordered, that plaintiff's action be and the same is hereby dismissed, and that defendant have and recover of and from the plaintiff, his costs herein.

W. H. SNELL, Judge.

Ent'd J. 96, p. 64; dep. 1.
Apr. 2, 1904.
Filed in superior court, Apr. 2, 1904.
A. M. BANKS, Clerk.

Ex. Doc. No. 21. Page 338.

In the Superior Court of the State of Washington for the County of Pierce.

JAMES GOUDY, Plaintiff,	)	
vs.	)	No. 22774.
	)	Notice of
EDWARD MEATH, Assessor of Pierce County, Washington, Defendant.	)	Appeal.
	)	
	)	

To Edward Meath, assessor of Pierce county, Washington, defendant in the above entitled case, and to F. Campbell, his attorney:

You and each of you are hereby notified that the above named plaintiff, James Goudy, appeals from the final judgment made and entered in said case by the superior court of the State of Washington for the county of Pierce, on the 2d day of April, 1904, to the supreme court of the State of Washington.

Dated this 4th day of April, 1904.

GEO. T. REID,
Attorney for Plaintiff.

I hereby acknowledge due service of the foregoing notice of appeal this 4th day of April, 1904.

F. CAMPBELL,
Attorney for Defendant.

Ent'd J. 96, p. 65; dep. 1.
Apr. 4, 1904.
Filed in superior court, Apr. 4, 1904.
A. M. BANKS, Clerk.

[p. 9] In the Superior Court of the State of Washington for Pierce County.

JAMES GOUDY, Plaintiff,	)	
	)	No. 22774.
vs.	)	Appeal Bond.
EDWARD MEATH, Assessor of Pierce County, Washington, Defendant.	)	
	)	
	)	

Know all men by these presents that we James Goudy as principal, and American Bonding Company of Baltimore, a body corporate, duly incorporated under the laws of the State of Maryland, and authorized to transact the business of surety in the State of Washington as surety, are held and firmly bound unto Edward Meath, assessor of Pierce county, Washington, the defendant above named, in the just and full sum of two hundred dollars ($200.00) for which sum, well and truly to be paid, we bind ourselves, our and each of our heirs, executors and administrators, successors and assigns, jointly and severally firmly by these presents.

Sealed with our seals, and dated this fourth day of April, 1904.

The condition of this obligation is such, that whereas, the above named defendant on the 2nd day of April, A.D. 1904, recovered judgment against the plaintiff above named, dismissing plaintiff's action, and for his costs in the superior court of Pierce county.

And whereas, the above named principal ha- heretofore given due and proper notice that he appeal said decision and judgment of said superior court to the supreme court of the State of Washington.

Now therefore, if the said principal James Goudy shall pay to Edward Meath, assessor, of Pierce county, Washington, the defendant above named, all costs and damages that shall be adjudged against him on the appeal or on the dismissal thereof, not exceeding in amount or value the above named two hundred dollars, then this obligation to be void; otherwise, to remain in full force and effect.

[SEAL.] JAMES GOUDY,
By GEO. T. REID, His Attorney. [SEAL.]
AMERICAN BONDING COMPANY OF BALTIMORE,
By HENRY MOHRN, Vice President.

Attest: L. N. HANSEN,
Assistant Secretary.

Filed the 4th day of March, 1904.

A. M. BANKS, Clerk,
By PETER DAVID, Deputy.

[p. 10] STATE OF WASHINGTON,)
County of Pierce,) ss:

I, A. M. Banks, county clerk and clerk of the superior court of Pierce county, State of Washington, do hereby

certify that the foregoing is a full, true and correct transcript of so much of the record and files in the above entitled cause as I have been directed by the appellant to transmit to the supreme court.

In testimony whereof, I have hereunto set my hand and [SEAL.] the seal of said superior court this 5th day of April, A. D. 1904.

A. M. BANKS, Clerk,
By CHAS. T. PETERSON, Deputy.

Indorsed: Filed in superior court Apr. 6 1904 A. M. Banks, clerk, by Peter David, deputy.

In the Supreme Court of the State of Washington.

JAMES GOUDY, Appellant,	)	
	)	No. 5128.
vs.	)	Stipulation.
EDWARD MEATH, Assessor,	)	
Respondent.	)	

It is stipulated by the respective parties by their attorneys, George T. Reid and F. Campbell, that the above entitled cause may be submitted without argument upon the briefs filed.

GEORGE T. REID,
Attorney for Appellant.
F. CAMPBELL,
Attorney for Respondent.

Indorsed: Filed May 10. 1904, C. S. Reinhart, clerk, F. S. Guyot. dep.

Filed Apr. 19, 1904. C. S. Reinhart, Clerk. F.S. Guyot, Dep.

In the Superior Court of the State of Washington
for the County of Pierce.

James Goudy, Plaintiff,	)	
vs.	)	No. 22774.
	)	Agreed
Edward Meath, Assessor of Pierce County, Washington, Defendant.	)	Statement of Facts.
	)	

It is hereby stipulated and agreed, by and between Geo. T. Reid, attorney for the plaintiff, James Goudy, and Fremont Campbell, prosecuting attorney of Pierce county, Washington, and attorney for the defendant Edward Meath, assessor of Pierce county, Washington, that the following are all the material facts of said case, and that upon this agreed statement of facts, the case shall be tried by the court, with the usual right of appeal to either party.

[p. 11] 1.

That on the 26th day of December, 1854, a treaty was concluded and signed between the United States and the Puyallup and other tribes of Indians, and was thereafter duly ratified and confirmed by the President and Senate of the United States. Said treaty is found in the United States Statutes at large, vol. 10, at page 1132, and is made a part of this agreed statement as fully as if copied herein.

2.

That by the terms of said treaty, lands were reserved for the members of said bands of Indians, and it was therein agreed that the same were to be assigned and patented to said members in severalty, on the same terms and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, as far as the same may be applicable. That the lands hereinafter described were a portion of the lands so reserved by said treaty.

3.

That the sixth article of said treaty with the Omahas is in the words following, towit:

"The President may, from time to time, at his discretion, cause the whole or such portion of the land hereby reserved as he may think proper, or of such other land as may be selected in lieu thereof, as provided for in article first, to be surveyed into lots, and to assign to such Indian or Indians of said tribe as are willing to avail of the privilege, and who will locate on the same as a permanent home, if a single person over twenty-one years of age, one-eighth of a section; to each family of two, one quarter section; to each family of three and not exceeding five, one half section; to each family of six and not exceeding ten, one section; and to each family over ten in number, one quarter section for every additional five members. And he may prescribe such rules and regulations as will insure to the family in case of the death of the head thereof, the possession and enjoyment of such permanent home and the improvements thereon.

And the President may, at any time, in his discretion, after such person or family has made a location on the land assigned for a permanent home, issue a patent to such person or family for such assigned land, conditioned that the tract shall not be aliened or leased for a longer term than two years; and shall be exempt from levy, sale or forfeiture, which conditions shall continue in force, until a State constitution, embracing such lands within its boundaries, shall have been formed; and the legislature of the State shall remove the restrictions. And if any such person or family shall at any time neglect or refuse to occupy and till a portion of the lands assigned and on which they have located or shall rove from place to place, the President may, if the patent shall have been issued, cancel the assignment, and may also with- [p. 12] hold from such person or family, their proportion of the annuities or other moneys due them, until they shall have returned to such permanent home, and resume the pursuits of industry; and in default of their return the tract may be declared abandoned, and thereafter assigned to some other person or family of such tribe, or disposed of as is provided for the disposition of the excess of said land. And the residue of the land hereby reserved, or of that which may be selected in lieu thereof, after all of the Indian persons or families shall have had assigned to them permanent homes, may be sold for their benefit, under such laws, rules or regulations, as may hereafter be prescribed by the Congress or President of the United States. No State legislature shall remove the restrictions herein provided for, without the consent of Congress."

4.

That plaintiff was born within the territorial limits of the United States; and on and prior to the 17th day of January, 1881, was a member of the Puyallup tribe of Indians, and was one of the members of said tribe entitled to an assignment of land under the provisions of said treaty, and that on said day the land hereinafter described was duly assigned to plaintiff.

5.

That plaintiff availed himself of the privilege thus offered, and accepted said assignment, and located upon said land as a permanent home, and cleared and cultivated said land, and built a dwelling house and other permanent improvements thereon.

6.

That on the 30th day of January, 1886, under the provisions of said treaty, the United States executed and delivered to plaintiff a patent for said land, which said patent is in the words and figures following, to wit:

"The United States of America to all to whom these presents shall come, Greeting:

Whereas, by the sixth article of the treaty concluded on the twenty-sixth day of December, anno-Domini one thousand eight hundred and fifty four, between Isaac I. Stevens, governor and superintendent of Indian affairs of Washington Territory, on the part of the United States, and the chiefs, headmen, and delegates of the Nisqually,

Puyallup, Steilacoom, Squawksin, S'Homamish, Steh-chass, T'Peeksin, Squiaitl, and Sa-heh-wamish tribes and bands of Indians, it is provided that the President, at his discretion, cause the whole or any portion of the lands hereby reserved, or of such other land as may be selected in lieu thereof, to be surveyed into lots, and assign the same to such individuals or families as are willing to avail themselves of the privilege, and will locate on the [p. 13] same as a permanent home, on the same terms and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable;

And whereas, there has been deposited in the General Land Office of the United States an order bearing date January 20th, 1886, from the Secretary of the Interior, accompanied by a return dated October 30th, 1884, from the Office of Indian Affairs, with a list approved October 23rd, 1884, by the President of the United States, showing the names of members of the Puyallup band of Indians who have made selections of land in accordance with the provisions of the said treaties, in which lists the following tracts of land have been designated as the selection of James Goudy, the head of a family consisting of himself and Mary, viz. the north west quarter of the north west quarter and lots number- three, four, seven and eight, of section twenty-one, in township twenty, north, of range four east of the Willamette meridian, Washington Territory, containing in the aggregate one hundred nine and 50-100 acres.

Now know ye, that the United States of America, in consideration of the premises and in accordance with the directions of the President of the United States under the

aforesaid sixth article of the treaty of the sixteenth day of March, anno Domini one thousand eight hundred and fifty-four, with the Omaha Indians, has given and granted and by these presents does give and grant, unto the said James Goudy, as the head of the family as aforesaid, and to his heirs, the tracts of land above described, but with the stipulation contained in the said sixth article of the treaty with the Omaha Indians, that the said tracts shall not be alienated or leased for a longer term than two years, and shall be exempt from levy, sale or forfeiture, which conditions shall continue in force until a State constitution embracing such lands within its boundaries shall have been formed and the legislature of the State shall remove the restrictions, and no State legislature shall remove the restrictions without the consent of Congress.

To have and to hold the said tracts of land, with the appurtenances unto the said James Goudy, as the head of the family as aforesaid, and to his heirs forever, with the stipulation aforesaid.

In testimony whereof, I Grover Cleveland, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, this thirtieth day of January, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the one hundred and tenth.

By the President:

GROVER CLEVELAND,
By M. McKEAN, Secretary.

S. W. CLARK, R."

[p. 14] 7.

That since the issuance of said patent, and by an act of Congress passed and approved on the 8th day of February, 1887, plaintiff became and now is a citizen of the United States, and entitled to all the rights, privileges and immunities of such citizens. Said act is found in the United States Statutes at Large, vol. 24, chapter 119, at page 388.

8.

That on the 11th day of November, 1889, a State constitution embracing said lands within its boundaries was formed.

9.

That the legislature of the State of Washington passed an act, approved March 22, 1890, the title of which was as follows: "An act enabling the Indians to sell and alien the lands of the Puyallup Indian reservation, in the State of Washington." That said act is found in the Session Laws of 1889-90 at page 499, and is hereby made a part of this statement of facts, as fully as if copied at length herein.

10.

That the Indian appropriation act, passed by Congress and approved March 3rd, 1893, (27 Stat. at Large page 612) contained the following paragraphs relative to the Puyallup Indians:

"That the President of the United States is hereby authorized immediately after the passage of this act to appoint a commission of three persons, and not more than one of whom shall be a resident of any one State, and it shall be the duty of said commission to select and appraise such portions of the allotted lands as are not required for homes for the Indian allottees; and also that part of the agency tract, exclusive of the burying ground, not needed for school purposes, in the Puyallup reservation, in the State of Washington. And if the Secretary of the Interior shall approve the selections and appraisements made by said commission, the allotted lands so selected shall be sold for the benefit of the allottees, and the agency tract for the benefit of all the Indians, after due notice at public auction at not less than the appraised value for cash, or one-third cash, and the remainder on such time as the Secretary of the Interior may determine, to be secured by vendor's lien on the property sold.

It shall be the duty of said commissioners, or a majority of them to superintend the sale of said lands, ascertain who are the true owners of the allotted lands, have guardians duly appointed for the minor heirs of any deceased allottees, make deeds of the lands to the purchasers thereof, subject to the approval of the Secretary of the Interior, which deeds shall operate as a complete conveyance of the land upon the full payment of the

purchase [p. 15] money; and the whole amount received for the allotted lands shall be placed in the Treasury to the credit of the Indian entitled thereto and the same shall be paid to him in such sums at such times as the Commissioner of Indian Affairs with the approval of the Secretary of the Interior shall direct: Provided, that the portion of the agency tract selected for sale shall be platted into streets and lots as an addition to the city of Tacoma, and sold in separate lots, in the same manner as the allotted lands, and the amount received therefor, less the amount necessary to pay the expenses of said commission, including salaries, shall be placed to the credit of the Puyallup band of Indians as a permanent school fund to be expended for their benefit: And provided further, that the Indian allottees shall not have power of alienation of the allotted lands not selected for sale by said commission for a period of ten years from the date of the passage of this act and no part of the allotted land shall be offered for sale until the Indian or Indians entitled to the same shall have signed a written agreement consenting to the sale thereof, and appointing said commissioners, or a majority of them trustees to sell said land and make a deed to the purchaser thereof; and no part of the agency tract shall be sold until a majority of said Indians shall consent thereto in a written agreement, which shall also constitute said commissioners, or a majority of them, trustees to sell said land as directed in this act, and make deeds to the purchaser for the same. The deeds executed by said commission shall not be valid until approved by the Secretary of the Interior, who is hereby directed to make all necessary regulations to carry out the purposes of the foregoing provisions. The proceeds arising from

the sale of the allotted lands shall be placed in the Treasury to the credit of the respective allottees, and the net proceeds of the agency tract, after paying the expenses of said commission in the appraisement and sale of said lands and reimbursing the United States for the amount advanced to said commission, shall be placed in the Treasury of the United States to the credit of all said Indians, and the said sums shall draw interest at the rate of four per centum per annum, and the income shall be annually expended for the benefit of said Indians, under the direction of the Secretary of the Interior: That an amount not exceeding one tenth of the principal sum may be expended for their benefit during any fiscal year, if deemed necessary by the Secretary of the Interior; provided further, that the entire expense herein incurred shall be apportioned by the Secretary of the Interior pro rata between the several allottees and the owners of the tribal tract; and the Secretary of the Interior may in his discretion designate one member of said commission to superintend the execution of any of the requirements of said commission herein provided for."

11.

That on the 14th day of February, 1903, the honorable Secretary of the Interior, in the regular performance of his official duties, [p. 16] made the following ruling and determination in a letter addressed to the Commissioner of Indian Affairs, which said letter is in the following words:

"Department of the Interior,
Washington, February 14, 1903."

The Commissioner of Indian Affairs.

Sir: I have considered your letter of the 29th ultimo, requesting instructions in regard to future procedure in the matter of the appraisement and sale of the Puyallup Indian lands in Washington.

The status of these lands is fully discussed in your letter, and shows, in brief, the following conditions: –

By act of the legislature of the State of Washington, approved March 22, 1890, all restrictions regarding alienation and sale of the said lands were removed, the same to take effect upon the consent of the United States to such removal. Under the provisions of the Indian appropriation act approved March 3, 1893, (27 Statutes, 612-633), a commission was appointed whose duty, as specified by the act, was to select and appraise such portions of the allotted lands as were not required for homes for the Indian allottees; and also that part of the agency tract, exclusive of the burying ground, not needed for school purposes, in the Puyallup reservation, and upon the approval of the selection by the Secretary of the Interior, to sell the allotted lands so selected for the benefit of the allottees, and the agency tract lands for the benefit of all the Indians. The said act further provided: – 'That the Indian allottees shall not have power of alienation of the allotted lands not selected for sale by said commission for a period of ten years from the date of the passage of this act, and no part of the allotted land shall be offered for sale until the Indian or Indians entitled to

the same shall have signed a written agreement consenting to the sale thereof * * * '

You invite attention to the fact that the ten years during which the allottees were not to have the power of alienation of their lands will expire on March 3, 1903, and you ask to be advised whether the provision contained in said Indian appropriation act relating to the removal of the restrictions from said lands is such consent as is required by the treaty under which patents were issued to said allottees.

The requirements of the treaties under which the patents were issued to these Indians were: – (1) that the tract should not be aliened or leased for a longer term than two years, and should be exempt from levy, sale or forfeiture; (2) that these conditions should continue in force until a State constitution embracing such lands within its boundaries should be formed, and the legislature of such State should remove said restrictions; and (3) that no State legislature should remove said restrictions without the consent of Congress.

I am of the opinion that the requirements of the treaties with respect to these lands have been fully met, and that the provisions of [p. 17] the act of the legislature of the State of Washington, of March 22, 1890, and the Indian appropriation act of March 3, 1893, referred to above, together operate to remove all restrictions upon the alienation or sale thereof by the allottees. I have therefore to direct that the Puyallup commissioner be instructed to continue the selection and appraisement of such portions of the Puyallup allotted lands *but only with the consent of the Indians,* as provided in the act of March

3, 1893, – until the expiration of the ten year period mentioned, to wit, March 3, 1903, after which date, in my judgment, the Puyallup Indian allottees will 'have power to lease, encumber, grant, and alien the same in like manner and like effect as any other person may be under the laws of the United States, and of' the State of Washington.

You are further directed to instruct the commissioner to take the necessary steps to complete and close up the business of his office as soon as practicable after March 3rd, next.

Very respectfully, E. A. HITCHCOCK, Secretary.

884, Ind. Div. 1903.
M.E.W. T.R."

12.

That the United States continues to maintain a school upon said reservation, at which Indian children whose parents reside on said reservation, are maintained free of cost to their parents, and are instructed in the elementary branches of learning, and are given practical instructions in farming and other useful pursuits.

13.

That at all times since the issuance of said patent, plaintiff has continued to occupy said land as a permanent home, and has cleared said land and cultivated the same and now resides thereon.

14.

That the defendant, Edward Meath, is the duly elected, qualified and acting assessor of Pierce county, Washington, in which said county said lands are situated; and said defendant claims that said lands and the permanent improvements thereon, are subject to taxation for State, county and other municipal purposes, and threatens to, and will, unless restrained by this honorable court, assess said land, and the permanent improvements thereon, and all other land and permanent improvements in said reservation, owned and held by Indians; members of said Puyallup tribe, under patents from the United States similar to plaintiff's, for taxes for State, county and other municipal purposes, and will enter said land and improvements upon the tax rolls of said county, and enter and extend taxes against said land and improvements for said purposes.

[p. 18] 15.

Plaintiff specially sets up and claims immunity from taxation for said land and the permanent improvements thereon, under and by virtue of said treaty of December 26th, 1854, and under and by virtue of the restrictions contained in the sixth article of the treaty with the Omahas.

16.

That heretofore no taxes have ever been levied or assessed against said land, or the permanent improvements thereon, owned by Indians in said reservation.

17.

That the Indians residing upon said reservation have entirely abandoned all their tribal customs and manners; they have and recognize no chiefs, headmen or other tribal authority; they vote at all elections, county, State and national; hold office and resort to the courts of the State for the redress of grievances. That up *the* the 3rd day of March, 1903, the Government of the United States claimed the right to and did superintend the leasing of their land, by and, through the suerintendent [sic] in charge of said school, acting under the directions of the Secretary of the Interior, and the Government upon *upon* one occasion exercised the authority shown by the case of Eells *vs.* Ross, 64 Fed. 417.

Upon the foregoing agreed statement of facts this case is submitted to the court for its decision.

If the court be of the opinion that said land and permanent improvements are subject to taxation, then judgment should go for the defendant.

If the court be of the opinion that said land and permanent improvements are not subject to taxation, then judgment should go for plaintiff according to the prayer of his complaint.

If the court be of the opinion that said land is not taxable but that said permanent improvements are taxable, then judgment should go accordingly.

GEO. T. REID,
Attorney for Plaintiff.
F. CAMPBELL,
Attorney for Defendant.

Dated March 25th, 1904

STATE OF WASHINGTON,)
) ss.
County of Pierce,)

I, W. H. Snell, the judge of the court before whom the case of James Goudy, plaintiff *vs.* Edward Meath, assessor of Pierce county, Washington, defendant, which cause was numbered 22774, was tried, do hereby certify that on this fifth day of April, 1904, per- [p. 19] sonally came before me George T. Reid, attorney for plaintiff, and F. Campbell, attorney for the defendant, and joined in request that certify (the agreed statement of facts) which was signed by counsel, and filed in this court on the 25th day of March, 1904, to be the statement of facts upon appeal in this case.

And such being the truth I do hereby certify that the attached agreed statement of facts are matters and proceedings occurring in the cause and that the same are hereby made a part of the record herein; and I do further certify that the same contains all the material facts, matters and proceedings heretofore occurring in the cause and not already a part of the record herein.

W. H. NELL, Judge.

Indorsed: Agreed statement of facts. Filed in superior court Mar. 25 1904 A. M. Banks, clerk, by Peter David, deputy.

Indorsed: Statement of facts. Filed in superior court Apr. 5 194. A.M. Banks, clerk.

Supreme Court of the United States.

OCTOBER TERM, 1905

No. 306.

JAMES GOUDY, PLAINTIFF IN ERROR.

vs.

EDWARD MEATH, ASSESSOR OF PIERCE COUNTY, WASHINGTON.

STATEMENT.

The plaintiff in error, Goudy, brought suit in the Superior Court of Pierce County, Washington, against Edward Meath, Assessor of Pierce County, Washington, to restrain him from assessing the land of plaintiff in error upon the Puyallup Indian Reservation for the purpose of taxation. (Transcript, pages 1-6.)

The defendant answered the complaint. (Transcript, pages 6-7.)

Counsel for the respective parties thereafter filed an agreed statement of facts. (Transcript, pages 10-18.)

The plaintiff, Goudy, is a Puyallup Indian. Transcript, page 2, paragraph 4.) He specially set up and claimed immunity from taxation for his land under and by virtue of the treaty of December 26, 1854, with the Puyallup Indians, and under the sixth article of the treaty with the Omahas. (Transcript, page 5, paragraph 12.)

[p. 4] Thereafter the Court entered a final judgment denying plaintiff's claim of immunity from taxation and dismissing his complaint. (Transcript, pages 7-8.)

Thereafter Goudy appealed to the Supreme Court of the State of Washington.

On April 4, 1905, the Supreme Court rendered an opinion affirming the decision of the trial Court and holding the land in question to be subject to taxation. (Transcript, pages 19-22.) Final judgment was entered by the Supreme Court on April 20, 1905. (Transcript, page 24.)

April 20, 1905, Goudy filed in the Supreme Court of the State of Washington his assignment of errors and prayer for reversal. (Transcript, page 24); also his petition for a writ of error, (page 25.)

Thereupon the Chief Justice made an order allowing the writ of error; the writ was regularly issued and citation issued, and served. (Transcript, pages 26-28.) A bond as security for costs was duly approved by the Chief Justice and thereupon the record was duly certified to this Court. (Transcript, page 29.)

SPECIFICATION OF ERRORS.

I.

The Supreme Court of the State of Washington committed error in holding and deciding that the Superior Court of the State of Washington, for the County of Pierce, did not commit error in entering judgment dismissing plaintiff's complaint, [p. 5] and especially did said Supreme Court commit error in denying plaintiff in error's claim to immunity from taxation under the treaty of December 26, 1854, between the United States and the

Puyallup tribe of Indians, and under the sixth article of the treaty of March 16, 1854, with the Omahas.

ARGUMENT.

On the 26th day of December, 1854, a treaty was concluded with the Puyallup Indians. (10 Stat., at L. 1132). It provided for the allotment of land in severalty to such of the members of that tribe as might be willing to avail themselves of the privilege and locate on the same as a permanent home. The allotments were to be made on the same terms and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas.

The sixth article of the Omaha treaty (10 Stat., at L., 1044), after providing for the allotment, gave the president authority to issue patents to the allotees "conditioned that the tract shall not be aliened, or leased, for a longer term than two years; *and shall be exempt from levy, sale or forfeiture.*" It is further provided that the State legislature (when a state should be formed) might remove these restrictions, but not without the consent of Congress.

Under the foregoing treaty and on January 30th, 1886, the patent to the plaintiff, James Goudy, was issued.

The Territory of Washington became a state in 1889. The first legislature that met under the newly formed constitution, enacted the following law:

> [p. 6] "AN ACT ENABLING THE INDIANS TO SELL AND ALIEN THE LANDS OF THE PUYALLUP INDIAN RESERVATION, IN THE STATE OF WASHINGTON."

"Whereas, it was and is provided by and in the treaty made with and between the chiefs head men and delegates of the Indian tribes (including the Puyallup tribe) and the United States of America, which treaty is dated on the 26th day of December, 1854, among other things as follows: 'That the president, at his discretion, should cause the whole or any portion of the lands thereby reserved, or such land as might be selected in lieu thereof, to be surveyed into lots and assign the same to such individuals or families as are willing to avail themselves of the privilege and will locate on the same as a permanent home, on the same terms, and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable; and

Whereas, It was and is provided by and in the sixth article of the treaty with the Omahas, aforesaid, among other things, that said tracts of land shall not be aliened or leased for a longer term than two years, and shall be exempt from levy, sale or forfeiture, which conditions shall continue in force until a state constitution embracing such lands within its boundaries shall have been formed, and the legislature of the state shall remove the restrictions, but providing that no state legislature shall remove the restrictions * * * without the consent of the Congress;' and

Whereas, the President of the United States, on the 30th day of January, 1866 (1886), made and issued patents to the Puyallup Indians, in severalty, for the lands of said reservation, which are now of record in the proper office in Pierce County, in the State of Washington; and

Whereas, all the conditions now exist which said treaties contain, and which make it desirable and proper to remove the restrictions in respect to the alienation and disposition of said lands by the Indians, who now hold them in severalty; now, therefore,

Be it Enacted by the Legislature of the State of Washington:

Section 1. That the said Indians who now hold, or who [p. 7] may hereafter hold, any of the lands of any reservation, in severalty, located in this state by virtue of treaties made between them and the United States, shall have power to lease, incumber, grant and alien the same in like manner and with like effect as any other person may do under the laws of the United States and of this state, and all restrictions in reference thereto are hereby removed.

Sec. 2. All deeds, conveyances, encumbrances or transfers of any nature and kind executed by any Indian, or in any manner disposing of any land, or interest therein, shall be by deed executed in the same manner as prescribed for the execution of deeds, conveying real estate, or any interest therein, except that the same shall in all cases be acknowledged before a judge of a Court of record. In taking said acknowledgment, the said judge shall explain to the grantor the contents of said deed or instrument, and the effect of the signing or execution thereof, and so certify the same in the acknowledgment, and before, the same shall be admitted to record shall duly examine and approve the said deed or other instrument.

Sec. 3. This act shall take effect and be in force from and after the consent to such removal of the restrictions

shall have been given by the Congress of the United States. Approved March 22, 1890." Laws 1889-90, page 499.

Under the provisions of the Indian appropriation act, approved March 3, 1893, (27 Stat., at L., 612, Statement, paragraph 10), Congress authorized the appointment of a commission, with power to superintend the sale of these lands for such of the allotees as might care to sell; which act contained the following proviso: "That the Indian allotees shall not have power of alienation of the allotted lands not selected for sale by said commission for a period of ten years from the date of the passage of this act." In the regular performance of his official duties, the Honorable Secretary of the Interior has determined that said act of the legislature and said act of Congress "to- [p. 8] gether operate to remove all restrictions *upon the alienation or sale* thereof by the allottees." Statement, pages 15 and 16.

For the purpose of this case, it is conceded that the Honorable Secretary's interpretation is correct, and that said allottees have unquestioned right to sell their lands in the usual and ordinary way in which other persons may dispose of their real property.

No attempt has heretofore been made to tax these lands or the permanent improvements thereon. (Statement, page 18, paragraph 16).

It is now claimed, for the first time, that said lands, owned and held by the original Indian allottees or their heirs are subject to state taxation. This question is of the utmost importance to the Indians, and of much importance to the public.

Plaintiff in error maintains that they are not subject to taxation, because the treaty specially exempts them from taxation, and that such restriction has not been removed.

The clause relied upon by plaintiff in error is, of course, the following from the Omaha treaty: "and shall be exempt from levy, sale or forfeiture." That the words just quoted, if still in force, are sufficient to exempt them from state taxation, is judicially settled by the case of Wan-zop-e-ah vs. County Commissioners, 5 Wallace, Law Ed., Book 18, page 674, wherein this Court held that these identical words, found in the Miami treaty, were sufficient to preserve the Miami lands from taxation.

Are the restrictions still in force? They are unless they have been removed by the legislature of Washington by and [p. 9] with the consent of the Congress of the United States. Defendant in error relies upon the act heretofore printed, as having worked such removal.

That they are removed by the express terms of the statute cannot be claimed. On the other hand, if it had been the intention of the legislature to remove the restrictions as to voluntary alienation, and at the same time to carefully refrain from the use of any language which might infer an intention to remove the restrictions against involuntary alienation, it is hard to see how better language could have been employed. In the preamble of said act it is recited that all the conditions now exist which make it desirable and proper to remove the restriction *in respect to the alienation and disposition of said lands by the Indians*. Can language be plainer than this? If the legislature had intended to remove, also, the restrictions in

reference to levy, sale or forfeiture, would it not have recited that "all the conditions now exist which make it desirable and proper to remove the restrictions *which said treaties impose*," or words to that effect? Instead of such language, however, we find in every part of this act – title, recitals and the body of the act – language which can only mean that while the legislature was willing that the Indian should sell *if he chose to do so*, it was unwilling to remove the humane restrictions which stood between him and the superior intelligence, rapacity, and cunning of his white brethren. The Indians are given authority to "lease, incumber, grant and alien the same in the manner and with like effect as any other person may do under the laws of the United States and of this state, and all restrictions *in reference thereto* are hereby removed." In view of the title to the act and the [p. 10] recitals of the preamble, and the ordinary rules of language and construction, it will hardly be contended that the words "in reference thereto" refer to all the restrictions contained in the treaty. The Court will, no doubt, give this language its sensible meaning and hold that the words "in reference thereto," mean in reference to the leasing, incumbering, granting and alienation of the land.

Why should it be thought incredible that the legislature should be willing to confer upon these Indians the right to voluntarily lease, encumber, or alien their lands, under the safeguards imposed by the act, and unwilling to subject them to taxes, which they cannot pay. The legislature has, in this act, with commendable justice and foresight, provided that any transfer *"of any nature and kind,"* executed by any Indian, in any manner disposing of any land, or any interest therein, shall in all cases be

acknowledged before a judge of a Court of record; and the judge is required to explain to the grantor the contents of the instrument and the effect of the execution thereof, and to examine and approve the same. It is hardly reasonable to say that it could have been the intention of a legislature that was unwilling that one of these Indians should be allowed to place the slightest encumbrance upon his land, unless he appeared before a judge of a Court of record and had the matter fuly explained to him, and the judge should examine and approve the instrument, to remove completely and absolutely, and that by mere implication, the other restrictions contained in the treaty, which certainly were of equal or greater importance.

This case was argued before the State Courts and will be argued in this Court upon the theory that the question involved [p. 11] is merely one of construction, viz.: do the act of the legislature and the act of Congress, taken together, remove the restrictions against levy, sale or forfeiture.

The Supreme Court of Washington in its opinion correctly states the point involved in the case at bar in the following words: "So that the real question in the case is, Have the restrictions that the land 'shall be exempt from levy, sale or forfeiture' been removed?" (Transcript, page 21).

The Court then decides that the following words found in the act of Congress of March 3, 1893 (27 Stats. at Large, p. 633): "And provided further that the Indian allottees shall not have the power of alienation of the allotted lands not selected for sale by said commissioners

for the period of ten years from date of the passage of this act," were by necessary implication a removal of all restrictions upon alienation whether voluntary or involuntary after the expiration of the ten year period. In other words the Court holds that the limitation against levy, sale and forfeiture is a mere incident and necessarily cease [sic] to operate when the restriction upon the voluntary sale by the Indian has been removed.

We are wholly unable to follow the Court's reasoning in this matter. Why does it follow that because the Indian is allowed to sell his land if he so elects, that therefore no good purpose can be subserved by not subjecting it to taxation? The case at bar is strong proof to the contrary. The complaint shows that Goudy has never sold a single foot of his land; he alleges that he still owns and lives upon the land in the patent described. Does it follow that because Goudy is too prudent to dispose of [p. 12] his land that therefore he should be taxed and subjected to the dangers of executions? If it were the policy of the law to force or encourage the Indian to sell, perhaps no better plan could be adopted than to tax it to the limit, for no person, acquainted with these Indians, will for a moment believe that they will or can pay taxes. Perhaps a few of the more thrifty ones may do so, but to the majority their total yearly earnings would not pay the taxes of a single year. As a matter of fact, the policy of the government for the last fifty years has steadily been to encourage, by every possible means, the adoption of habits of settled industry by the Indian, and their settlement upon and cultivation of the soil.

But whatever the Court may think of the act of the legislature, it is true that the act was only effectual in so

far as it received the assent of Congress. The assent of Congress went no further than to confer upon the Indian the power to sell his land. (Transcript, page 15). It certainly cannot be claimed that the assent went to the removal of the restrictions against levy, sale or forfeiture.

So we arrive at this point in the argument: that unless the mere fact of the removal of the restrictions against alienation, *ipso facto* removed the restrictions against taxation, then such restrictions have not been removed.

Congress has certainly never considered that there was any inconsistency in granting the Indian an absolute fee simple title, with full power of alienation, and still preserving the land from state taxation. The treaty of January 31, 1855, with the Wyandotts (10 Stat. at L., page 1159) is a good illustration. This [p. 13] treaty provided for the grant of lands in severalty to the Wyandotts. It further provided that the commissioners appointed under the act should make lists of the members of the tribe, showing first, those families, the heads of which are sufficiently intelligent, competent and prudent to control and manage their affairs and interests. Second, those which are not so competent, and third, the orphans, idiots or insane. Article four provides that upon receipt of these lists by the Commissioner of Indian Affairs, patents shall be issued. To those of the first class (the competents) the patents shall contain an absolute and unconditional grant in fee simple, but to those not competent, the patents shall contain restrictions against alienation. The article then provides that: "*None* of the lands to be assigned and patented to the Wyandotts, shall be subject to taxation for a period of five years from and after the organization of a

state government over the territory where they reside. * * * "

Here we have a distinct assertion by the treaty-making power, of the right of the government to grant, by patent, to an Indian, a tract of land, with full power of alienation, and yet with a distinct restraint against taxation.

In the case of Wan-pe-man-qua vs. Aldrich, 28 Fed., at page 496, Judge Woods says: "There seems to me to be no reason, speaking generally, why the unrestricted right to alienate should make Indian lands taxable, which otherwise would not be."

The presumption is not violent that both the legislature and Congress were informed of the conditions existing on the Puyallup reservation. It may well be presumed that both branches of the government knew that but a small fraction of [p. 14] this land was being actually cultivated by the Indians; that the major portion of it was covered by dense forests which the Indian could not or would not clear; that a considerable portion of it is salt-marsh, wholly unsuited to cultivation or use by the Indian; and that to permit the Indian to dispose of such of his land as was of no use to him, would be a benefit to him, and also to the white population. It can hardly be presumed that Congress would have been willing to subject the "home place" of the Indian to state taxation, in view of the fact that it has been the constant aim of Congress to encourage, by every means possible, the cultivation of the soil by the Indians.

No great amount of light is thrown upon the case at bar by the consideration of the adjudged cases. The circumstances surrounding each case which counsel for plaintiff in error has been able to find, are in at least some particulars so different from the facts in this case, as to render the case of but little value as an authority. The case of Blue Jacket vs. Commissioners, 5 Wallace, Law Ed., Book 18, page 667, is perhaps the leading case on the subject. In that case the facts were quite similar in some respects, viz., the land had been allotted in severalty; the Indians lived among the whites; and their tribal customs (as actually observed) had been much broken into. But the decision was placed upon the ground that the tribal relation actually existed, which renders it of no value as an authority in this case.

In United States vs. Rickert, 188 U. S. Law Ed., Book 47, page 532, the tribal relation no longer existed; the Indians had been made citizens by the very same act which made the Puyallups citizens, although the fact is not clearly stated by the Court. But in that case the decision is largely based upon the [p. 15] fact that the *title* was held in trust by the United States, and that therefore, the permanent improvements upon the land were not taxable. The Court does, however, at page 538 of the volume above cited, make use of language which illustrates the liberal view which the Court takes of questions of this kind, showing that the strict and narrow logic appropriate enough when construing acts of a certain nature, is entirely out of place when dealing with the rights of this unfortunate race, so utterly helpless to protect their own rights, and so completely dependent upon the superior justice of our courts. The Court says:

"Counsel for the appellee suggests that the only interest of the United States is to be able at the end of twenty-five years from the date of allotment to convey the *land* free from any charge or encumbrance; that if a house upon Indian land were seized and sold for taxes, that would not prevent the United States from conveying the *land* free from any charge or encumbrance; and that, in such case, the Indians could not claim any breach of contract on the part of the United States. These suggestions entirely ignore the relation existing between the United States and the Indians. It is not a relation simply of contract, each party to which is capable of guarding his own interests, but the Indians are in a state of dependency and pupilage, entitled to the care and protection of the government. When they shall be let out of that state is for the United States to determine without interference by the Courts or by any state. The government would not adequately discharge its duty to these people if it placed its engagements with them upon the basis merely of contract, and failed to exercise any power it possessed to protect them in the possession of any improvements and personal property as were necessary to the enjoyment of the land held [p. 16] in trust for them." This case is particularly valuable because it recognizes the right of the United States to act as guardian and protector of the Indian after, as well as before, the dissolution of the tribal relation. Is it within the spirit of the above case to try, by extending the act of the state legislature far beyond its plain reading, to make these lands subject to state taxation before Congress has in any manner consented thereto?

In reason, why are these lands any more liable to taxation than they have been for the past ten years? The only difference to be noted is, that since March 3, 1903, the Indians have been able to sell their lands directly to the purchaser, whereas, before that date they could only make sales through the Commissioner appointed for that purpose. But that formality was but a mere regulation to insure the Indian a fair consideration and an actual payment of the consideration. The *Title* was just as much in the Indian before as after that date. It is possible that the state Court was impressed with the idea that the Indian should pay taxes. That question is, however, one that no court has a right to consider. We quote from the closing paragraph of United States vs. Rickert, 188 U. S., 47 Law Ed., page 539: "Some observations may be made that are applicable to the whole case. It is said that the state had conferred upon these Indians the right of suffrage and other rights that ordinarily belong only to citizens, and that they ought, therefore, to share the burdens of government like other people who enjoy such rights. These are considerations to be addressed to Congress. It is for the legislative branch of the government to say when these Indians shall cease to be dependent and assume the responsibilities attaching to citizenship. This is a political [p. 17] question, which the Courts may not determine. We can only deal with the case as it exists under the legislation of Congress."

It will be conceded, we presume, that if plaintiff in error is entitled to exemption as to his land that the same exemption will apply to the permanent improvements upon the land, under the decision of United States vs. Rickert, 188 U. S., heretofore cited.

It is respectfully submitted that the judgment of the state court should be reversed, with directions to enter judgment for plaintiff in error according to the prayer of his complaint.

WALTER CHRISTIAN,

Attorney for Plaintiff in Error.

Tacoma, Wash.

ILLEGIBLE

IN THE

SUPREME COURT of the UNITED STATES

JAMES GOUDY,
Plaintiff in Error,
vs.
EDWARD MEATH, Assessor of Pierce County, Washington,
Defendant in Error.

No. 53.

Error to the Supreme Court of the State of Washington

BRIEF OF DEFENDANT IN ERROR

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TACOMA, WASHINGTON.

[This page is not numbered, next page is page 4]

IN THE

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ARGUMENT

In 1854 the United States government entered into a treaty with the Omaha tribe of Indians by the terms of which it was provided in the 6th Article thereof that there should be selected and allotted to such Indians as desired, certain lands selected by them, which lands should be held in severalty subject to such regulations as the President might prescribe, as will insure to the Indian and his family, in case of his death, the possession and enjoyment of such premises. It further provided that the President could issue patents therefor, conditioned that the lands should not be alienated or leased for a longer period than two years and should be exempt from levy, sale or forfeiture, which conditions should continue in force until a state constitution embracing such lands

within its boundaries should be formed and the legislature of the state should remove the restrictions.

10 *U. S. Statutes,* 1132.

[p. 4] On the 26th of December, 1854, a treaty was entered into with the Puyallup tribe of Indians by the terms of which the lands belonging to such tribe should be surveyed into lots and they should be assigned and allotted to the individual Indian:

"On the same terms and subject to the same restrictions as are provided in the 6th Article of the treaty with the Omahas, as far as the same may be practicable."

10 *U. S. Statutes,* Sec. 6, Page 1133.

In pursuance to this treaty and act of Congress the lands belonging to the Puyallup Indians were all allotted to the individual members of the tribe, and each took possession of their respective tracts and the plaintiff in error acquired the land described in the complaint in this manner and in 1886 a patent was issued to him therefor, containing the following conditions: "That the said tract should not be alienated or leased for a longer term than two years and should be exempt from levy, sale or forfeiture, which conditions shall continue in force until a state constitution embracing such lands within its boundaries shall have been formed and the legislature of the state shall remove the restrictions, and no state legislature shall remove the restrictions without the consent of Congress."

The Congress of the United States passed an act on February 8th, 1887 (23 U. S. Stat., 390) wherein it was provided among other things, as follows:

Sec. 6. "That upon the completion of said allottments and the patenting of the lands to said allottees, each and every member of the respective bands or tribe of Indians to whom allotments shall have been made, shall have the benefit of and be subject to, the laws, both civil or criminal, of the state or terri- [p. 5] tory in which they may reside, and no territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law; and every Indian born within the territorial limits of the United States to whom allotments shall have been made under the provisions of this act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up within said limits his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States and is entitled to all the rights, privileges and immunities of such citizen."

By the terms of this statute when these lands were allotted to the individual Puyallup Indians, their tribal relations ceased and they became, and were, citizens of the United States and entitled to all the rights, privileges and immunities of such citizens and became subject to all the laws, both civil and criminal, of the State of Washington; since which time they have exercised the right of elective franchise, have held office and have been accorded and have exercised all the rights of other citizens, except as to the control of their land.

In 1889 Washington adopted a state constitution which embraced the land belonging to the Indians, and the land of Plaintiff in Error, described in the complaint. After the adoption of this constitution the legislature of

the State of Washington on the 22nd day of March, 1890, enacted a law entitled:

"Puyallup Indians may sell lands. An act enabling Indians to sell and alien the lands on the Puyallup Indian Reservation in the State of Washington," wherein it provided as follows: "Whereas, all the conditions now exist which said treaties contain and which make it desirable and proper to remove the restrictions in respect to the alienation and *disposi-* [p. 6] *tion* of said lands by the Indians who now hold them in severalty; Therefore be it enacted by the legislature of the State of Washington, Sec. 1. That the said Indians shall have the power to lease, incumber, grant and alien the said lands in like manner and with like effect as any other person may do under the laws of the United States and of this State, and *all restrictions* in reference thereto *are hereby removed.*"

This act further provided that it should be in force from and after the consent to the removal of such restrictions by the Congress of the United States. Thereafter, on March 3rd, 1893, Congress passed an act (27 U. S. Stat., 633) providing for the appointment of three commissioners who should, under their terms and restrictions therein contained, proceed to sell the lands of the Puyallup Indians, who should give their consent thereto. By the terms of this act it was provided:

"That the Indian allottees should not have the power of alienation of the allotted lands not selected for sale by the said commissioners, for the period of ten years from the date of the passage of this act."

It is the contention of the defendant in error that the aforesaid act of the legislature of the State of Washington,

together with this act of Congress, removed all restrictions after the expiration of the ten year period referred to in the last mentioned act.

That the restrictions against alienation theretofore existing were removed, seems too clear for argument: The proviso referred to could have no other meaning, for at the time of the passage of said act, under the 6th Article of the treaty with the Omahas, the Indian could not alienate his tract of land for a longer period than two years. Manifestly then, when Congress [p. 7] enacted that the allotted lands not selected for sale by the Indian Commissioner should not be alienated for a period of ten years, or until March 3rd, 1903, it by plain and necessary implication intended to, and did, provide that thereafter such lands so allotted could be sold and transferred and that there should no longer remain any restrictions whatsoever against voluntary alienation.

The Honorable Secretary of the Interior has so construed this act (See record, pages 16-17) and the plaintiff in error concedes, this position to be well taken. We contend that it was certainly the intention of Congress in this act that when the "Power of alienation" of the Indian allottees is referred to, that clause pertained to the involuntary as well as the voluntary alienation. The provision of the aforesaid Art. 6 of the treaty with the Omahas: "That the lands shall be exempt from levy, sale or forfeiture," was to prevent that from being done indirectly which could not be done directly; these restrictions, first, as to the direct sale by voluntary act of the Indian, and secondly, by his involuntary act in allowing conditions to arise which would permit the forced sale of his land are so inseparably connected that we do not think a fair and

reasonable construction of the act will permit the one to be removed and the other to remain. All the restrictions were against alienation in one form or another, and those against levy, sale or forfeiture, were simply to effectively preserve to the Indian his allotted land from sale by operation of law as long as he could not dispose of it by his voluntary act. The limitation against levy, sale and forfeiture is a mere incident and must necessarily cease to operate when the restrictions upon the voluntary sale [p. 8] by the Indian have been removed. Since March 3rd, 1903, he has the power of voluntary alienation, consequently the very object and purpose of the restrictions as to levy, sale and forfeiture no longer exist.

But it is only necessary for this court to hold that the language of the act of Congress amounted to a consent to the removal. By the terms of the treaty the removal of the restrictions was to be made by the state legislature; that body, by the act above quoted, provided that all the restrictions were removed, and we earnestly insist that with this law on the statute books of the State of Washington, the Congress of the United States intended to, and did give its consent that all restrictions should be removed, when they passed this act of March 3rd, 1903.

In so far as the act of the legislature of the State of Washington is concerned, the removal of the restrictions as to levy, sale and forfeiture is not made by implication; it seems to us that no language could be plainer or stronger, that *all restrictions* therefore existing were removed. It is ingeniously argued that the words: "In reference thereto" refer to the restrictions merely against leasing, etc., but we think this language refers plainly to the restrictions upon the land – in reference to the land,

and that all restrictions were therefore in direct and unambiguous language, removed and those against levy, sale or forfeiture are not removed simply by implication, but by direct and positive statutory enactment. The language taken in its usual and ordinary sense and giving it a fair and reasonable interpretation is, that all restrictions in reference to the land are hereby removed.

[p. 9] Moreover, the legislature of the State of Washington on the 30th day of March, 1899, passed an act entitled: "An act relating to the sale of allotted lands by the Indians," wherein it provided that it was the intention of the act: "To remove from the Indians residing in this State all the existing disabilities relating to the alienation of their real estate."

Both Congress and the State Legislature have therefore removed all restrictions in reference to the alienation of these lands by the Indians and they can be sold and conveyed as fully as lands owned by other citizens of the State; this is conceded on the part of counsel for plaintiff in error, but he insists that while the Indian may convey his land, it cannot be sold by levy, sale or forfeiture, and therefore not being subject to levy, cannot be assessed for taxes.

We cannot agree with this position. In construing the acts of the legislature the purpose and object to be maintained must always be kept in mind and the law be so construed as to give force and effect to that intent. The intention of Congress originally was to protect the Indian in the possession of his land and he was deprived of the power of voluntarily disposing of the same and to further the purpose of the act it was provided that it should not

be subject to levy, sale or forfeiture, for if it could be involuntarily taken from him through levy, sale or forfeiture the very purpose of the law would be defeated.

When these restrictions against alienation have been removed and the Indian has been given authority to sell his land, there can be no purpose or good subserved by not making it sub- [p. 10] ject to levy, sale or forfeiture, for with these provisions in the land is not preserved to the Indian as long as he has a voluntary right of disposition of the land, and when, therefore, the restrictions against alienation were removed by Congress by the lapse of ten years time, and by the legislature of the State of Washington, they intended to remove all disabilities relating to alienation, whether voluntary or involuntary, either by the Indian himself, or by levy, sale and forfeiture of his land. The levy, sale and forfeiture clause was incorporated in the patent to protect him in the possession of his land, and since the Indian is no longer under the protection of the law as to the sale of his property, it would be vain to say that the legislature intended that the land should not be subject to levy, sale or forfeiture. These Indians possess all the rights of citizenship; many of their lands have passed into the hands of other citizens; why should not this land now be held to share its just burden of public taxation? We cannot think that the legislature of the State of Washington ever intended after they granted the Indians the right to dispose of his land, to still relieve the land from sharing its just burden of taxation, or to say that they intended that it should not be liable to levy and sale for the satisfaction of his legal debts and obligations. The language of the act of the

legislature must be construed with reference to its evident intent, and not too strictly with reference to its phraseology; very often the acts of the legislature are prepared by men who are not lawyers and the best language it [sic] not always used to express the object and the purpose of the act, but it seems to us clear that although the legislature, and Congress itself, did not when they raised the restrictions that were existing against [p. 11] this land use the identical language and phraseology contained in the treaties and the patent, that the evident intent and purpose was to remove the restrictions, and all of them, of every kind or nature that were against either the voluntary or involuntary alienation of this land. The act of the legislature of the State of Washington, it is true, does not follow the exact language of the patents, but in order to understand what was intended by the act it is necessary to read the whole of it.

The Indians are given authority by the act to lease, incumber, grant and alien the same in like manner and with like effect, as any other person may do under the laws of the United States and this State and all restrictions in reference thereto are hereby removed. The words: "And all restrictions in reference thereto are hereby removed" used in the act certainly must relate to the lands and not to the words "Lease, incumber, grant and alien."

The point is made by learned counsel for plaintiff in error that the language used could only mean that, while the legislature was willing that the Indian could sell, if he chose to do so, it was unwilling to remove the humane restrictions which stood between him and the superior intelligence, rapacity and cunning of his white brother,

but we are unable to understand the logic of this kind of an argument. If the State and Nation are willing to remove the restrictions against the Indian selling his land, certainly they would not be unwilling to remove the restrictions upon taxation upon the ground of the superior intelligence, rapacity or cunning of the taxing officers of the State. It would rather appear to us that the law-making bodies [p. 12] of such State and Nation would consider the restrictions upon the voluntary sale of the land the more proper safeguard against the superior intelligence, rapacity and cunning of his white brother.

When the United States stipulated with the Indian that he could not sell his lands until the happening of certain events, both in the treaty and in his patent, specified; it was because the government did not think the Indian capable of dealing with his own in an untutored state, and it was to preserve the land to him until he adopted the habits of the whites and civilized life, and should be able to understand the value thereof; and in order to fully accomplish this end it was also stipulated that these lands should not be subject to levy, sale or forfeiture. The restrictions upon alienation would be of no avail to the Indian if his land could be levied upon or forfeited, and it was necessary to provide against this as well as alienation. These restrictions were to remain upon the lands until in the wisdom of the legislature of the State in which the land was located, they should be removed. The Congress of the United States did not reserve either in the treaty or in the patent, the right to say how or in what manner these restrictions should be removed by the legislature; the treaty and the patent only reserved to Congress the single right to either give or

withhold consent to the removal of these restrictions, and that part of the act aforesaid of March 3rd, 1893, which gave its consent to the sale of these lands by the Indians after ten years was an expression by Congress of a willingness on its part that the lands might be alienated by the Indians after that time, and as to whether the restrictions as to levy, sale and forfeiture have been re- [p. 13] moved must be determined by the act of the legislature in connection with the consent of Congress.

The Wyandottes case, cited by plaintiff in error, and other cases referred to are not in point here because those patents contained an express exemption from taxation for a period of five years. Neither is the case of the Kansas Indians in point, because those lands belonged to tribal Indians; Indians who have never severed their tribal relations; nor is the case of the United States vs. Rickert in point, because in that case the United States expressly, by the terms of the patent, held the lands in trust for a period of twenty-five years, at the end of which period it was to convey the lands absolutely to the Indian, and under such circumstances no one would contend that the land would be subject to taxation during that period. But the conditions here are entirely different; not only are the Puyallup Indians citizens of the United States and endowed with all the rights, privileges and immunities of all citizens of the State, and subject to all the laws, both civil and criminal of the State, but they exercise those rights fully; they vote, hold office; have long ago severed their tribal relations; have adopted the habits of civilized life; their lands have been patented to them in severalty; there is no trust relationship existing between the government and these Indians relating to their lands; they have

long ago ceased to be wards of the government, the government has entirely relinquished and abandoned all control over them and their lands. The State Legislature has removed all restrictions therefrom and there is no sound reason that can be advanced why these lands are not taxable now the same as any other lands.

[p. 14] We agree with counsel for plaintiff in error, that very little light can be thrown on this case from former adjudications; this case stands alone and must be decided upon its own merits from a construction of the acts of the State Legislature and congressional enactments. Counsel for plaintiff in error contends that the moment the Indian patentee sells his land then of course it becomes taxable. He says the exemption is not to the soil, but to the Indians' land. That, it seems to us, is a very violent assumption; the treaty and the patent both expressly provide that the land shall not be sold or alienated for a longer period than two years and shall be exempt from levy, sale or forfeiture until a state constitution is formed embracing such land within its boundary, and the State Legislature shall remove such restrictions. These restrictions are upon the land and relate directly to the land itself. The treaty and the patents do not say that such restrictions shall be upon the land only while the title is in the hands of the Indian, but they shall remain upon the land until removed therefrom by the legislature, with consent of Congress. The reasoning of the case seems to be that because of the restrictions upon these lands they must be exempt until such restrictions are removed in the manner provided by the treaty and patents. The mere transfer of title in itself certainly cannot operate to remove such restrictions, and it is because of

the peculiar situation in which the lands would be left were the contentions of plaintiff in error to prevail, that the courts will give to the acts of the legislature a construction which is consistent with sound reason under the circumstances of the case. The legislature certainly did not intend to remove merely the restrictions upon alienation of these lands so that the Indian could sell them to [p. 15] any white, black or red person and still allow such lands to escape their just proportion of the burdens of taxation. If such was the intention of the legislature then that body violated the constitutional prohibitions against such legislation, because these lands once the restrictions against alienation are removed, lose their character as lands which under the constitution of the state and laws of the United States are exempt from taxation. Then why, we ask, is it reasonable to say that the legislature only intended to remove the restrictions upon alienation and intended to, and did retain the restrictions against taxation until some further time in the future? To say to the Indian, you may sell your land today, the restrictions are all removed, but we will not, and do not intend, to remove the restrictions against taxation of these lands, no matter whether you sell them or not, seems too great an absurdity to require serious consideration. It seems to us that it would be more reasonable to say that if the legislature intended to grant to the Indian the right to sell his land, and that if that was the only restriction intended to be removed by the act of the legislature of 1890, the same act would have provided that all other restrictions upon such land contained in the patent should remain upon the land while the title to such land remained in the Indian, and if it had been the intention of the legislature to only

remove the restrictions as to alienation it would have undoubtedly provided that the other restrictions should remain upon such land until the Indian had parted with his title.

In conclusion we desire to say to the Court, that it must be apparent from a reading of the whole act that the clear intention of the legislature must have been to remove all restrictions con- [p. 16] tained in the patents to these lands. Should the Court hold otherwise it would require a further act of the legislature, and the further consent of Congress before these lands could be taxed, no matter who becomes the owner thereof, and the effect of such holding would be that eighteen thousand acres of the most valuable lands in the State of Washington would escape their just proportion of the burden of taxation, without any just reason therefor, and in violation of the rights of other taxpayers in the State of Washington.

We respectfully submit to the Court that the judgment of the Supreme Court of the State of Washington should be affirmed.

Respectfully submitted,

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TACOMA, WASHINGTON.